

COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

UNITED STATES OF AMERICA and
STATE OF TEXAS,

Plaintiffs,

v.

CITY OF PLAINVIEW, TEXAS,

Defendant.

5-04CV0218-C

Civil Action No.

CONSENT DECREE

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I. BACKGROUND

WHEREAS, Defendant, the City of Plainview ("City") owns and operates a publicly owned treatment works located adjacent to Running Water Draw, approximately two miles southeast of the intersection of U.S. Highway 70 and State Highway Loop 445, in Hale County, Texas ("Plainview POTW"), that treats and discharges residential and commercial sewage from the City and surrounding areas;

WHEREAS, the EPA Administrator issued National Pollutant Discharge Elimination System ("NPDES") Permit No. TX0047571, effective beginning on March 1, 1997, to the City for the Plainview POTW, pursuant to Section 402(a)(1) of the Clean Water Act (the "Act"), 33 U.S.C. § 1342(a)(1), that, inter alia, authorizes discharge of pollutants from the POTW in accordance with various limitations, requirements and conditions. The NPDES permit also set forth effluent limitations for Ammonia-Nitrogen and required the City to achieve compliance with these limitations by March 1, 2000;

WHEREAS, on October 16, 1997, the EPA issued Administrative Order, Docket No. VI-98-1002 ("1997 AO") to the City. The Order alleged exceedences of effluent limitations, failure to properly operate and maintain the POTW, failure to follow required laboratory testing procedures, and failure to comply with monitoring and reporting requirements. The Order required the City to take corrective action, inter alia, to attain compliance with its NPDES permit effluent limitations, to properly operate and maintain the POTW, to follow required laboratory testing procedures and to comply with reporting and monitoring requirements;

WHEREAS, on February 24, 1998, the EPA filed Administrative Complaint Docket No. VI-98-1620 ("Administrative Complaint") against the City for violating various

provisions of the Act, the Act's implementing regulations, and the terms of the City's NPDES permit as specified in the 1997 AO;

WHEREAS, on September 16, 1998, the EPA and the City entered into a Consent Agreement and Order, without adjudication of any issue of law or fact, whereby the City, without admission of liability or violation, agreed to pay a civil penalty in the amount of \$23,332, complete a Supplemental Environmental Project and rectify the conditions leading to the violations set forth in the Administrative Complaint;

WHEREAS, on September 20, 2000, EPA issued Administrative Order CWA-6-00-1094 to the City. The Order required the City to take whatever corrective action was necessary to eliminate and prevent recurrence of the effluent limit violations for CBOD and Ammonia-Nitrogen;

WHEREAS, the City increased sewer rates beginning in September 2000 and on October 16, 2000, received a Preliminary Design for POTW improvements designed to enable the City to meet consistently the CBOD, TSS and Ammonia-Nitrogen effluent limits in its NPDES permit. Construction began on the POTW improvements on October 1, 2001. The improved POTW came on line in June 2003;

WHEREAS, Defendant has substantially rebuilt its publicly owned treatment works at a cost of approximately \$9 million and, since completion of these improvements in June 2003, has consistently produced effluent that is substantially below allowable discharge limits;

WHEREAS, Plaintiff, the United States of America ("United States"), by the authority of the Attorney General of the United States and through its undersigned counsel, acting at the request and on behalf of the Administrator of the United States Environmental

Protection Agency ("EPA"), and the State of Texas, have filed a Complaint in this action seeking injunctive relief and civil penalties pursuant to Section 309 of the Act, 33 U.S.C. § 1319, naming as defendant the City pursuant to Section 309(e) of the Act, 33 U.S.C. § 1319(e), for the discharge of pollutants to the waters of the United States in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a), and for the violation of effluent limitations and other conditions established in the NPDES permit issued to the City pursuant to Section 402 of the Act, 33 U.S.C. § 1342;

WHEREAS, the Complaint against Defendant specifically alleges that the City violated Section 301 of the Act, 33 U.S.C. § 1311 and NPDES Permit No. TX0047571 by discharging wastewater from its POTW which exceeded the effluent limits set forth in the NPDES on numerous occasions during the period of at least March 2000 through May 2003;

WHEREAS, the Complaint against Defendant specifically alleges that the City violated Section 301 of the Act, 33 U.S.C. § 1311 and Part I(B)(1)(b) of Permit No. TX0047571, by failing to comply with final effluent limitations for Ammonia-Nitrogen until June 2003, over three (3) years after the deadline in the NPDES permit;

WHEREAS, the State of Texas is a plaintiff in this action and is joined as a party under Section 309(e) of the Act, 33 U.S.C. § 1319(e). Whenever a municipality is a party to a civil action brought by the United States under section 309, the Act requires the State in which the municipality is located to be joined as a party. In addition, on September 14, 1998 and pursuant to Section 402 of the Act, 33 U.S.C. § 1342, EPA granted to the State of Texas authority to administer its own permit program for discharges into navigable waters within Texas;

WHEREAS, on March 16, 2004, the State of Texas issued to the City of Plainview TPDES Permit No. 10537-001 that replaces NPDES Permit No. TX0047571. On August 16, 2004, the State of Texas issued the City of Plainview TPDES Permit No. WQ0010537001, a minor amendment that replaces TPDES Permit No. 10537-001, issued March 16, 2004.

WHEREAS, without making any admission of law or fact, and without admitting any violation of law or regulation, the City and the United States have negotiated in good faith and have reached a settlement of the issues raised in the Complaint;

WHEREAS, the Parties agree, and the Court finds, that settlement of the claims alleged in the Complaint without prolonged litigation or trial of any issues is fair, reasonable, and in the public interest and that entry of this Consent Decree is the most appropriate way of resolving the claims alleged in the Complaint;

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, below, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the Act, 33 U.S.C. § 1319(b), and over the Parties. Venue lies in this District pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b) and 28 U.S.C. §§ 1391(b) and 1395(a), because Defendant resides and is located in this judicial district, and the violations alleged in the Complaint are alleged to have

occurred in, and Defendant conducts business in, this judicial district. For purposes of this Decree, Defendant does not contest the Court's jurisdiction over this action or over Defendant and does not contest venue in this judicial district.

2. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Sections 301 and 309 of the Act, 33 U.S.C. §§ 1311 and 1319.

3. Notice of the commencement of this action has been given to the State of Texas, as required by Section 309(b) of the Act, 33 U.S.C. § 1319(b).

III. PARTIES

4. Plaintiff, the United States, is acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency. Plaintiff, the State of Texas, is a person within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

5. Defendant, the City of Plainview, is a political subdivision of the State of Texas, duly chartered and formed under the laws of the State of Texas, and is a municipality within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4), and 40 C.F.R. § 122.2.

IV. APPLICABILITY

6. The obligations of this Consent Decree apply to and are binding upon the United States, the State of Texas, and upon the City and its successors and assigns.

7. At least thirty (30) days prior to transferring ownership or operation of the Plainview POTW to any other person, the City shall provide a copy of this Consent Decree to each prospective successor owner or operator and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA

Region VI, the United States Attorney for the Northern District of Texas, and the United States Department of Justice, in accordance with Section XIX of this Consent Decree (Notices). Any such transfer must be conditioned upon the transferee's agreement to undertake the obligations required by this Consent Decree, as provided in a written agreement between the City and the proposed transferee, enforceable by the United States as third-party beneficiary of such agreement. No such transfer of ownership or operation of the Plainview POTW, whether in compliance with this Paragraph or otherwise, shall relieve the City of its obligation to comply with the terms of the Consent Decree. Any attempt to transfer ownership or operation of the Plainview POTW without complying with this Paragraph constitutes a violation of this Consent Decree.

8. The City shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree or work that could impact the City's ability to comply with this Consent Decree; the City shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

9. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

V. PURPOSE

10. It is the express purpose of the parties entering into this Consent Decree:

- a. To require the City to achieve and maintain compliance with its NPDES permit and the Act;
- b. To require the City to perform the Work required by this Consent Decree in compliance with the applicable schedules;
- c. To require the City to implement a Management, Operation and Preventative Maintenance Program for the Plainview POTW and monitor compliance therewith; and
- d. To further the goals and objectives of the Act, particularly Sections 101 and 301, 33 U.S.C. §§ 1251 and 1311.

VI. DEFINITIONS

11. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in the Act or in regulations promulgated pursuant to the Act, shall have the meaning assigned to them in the Act or such regulations. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. "Act" means the Clean Water Act, 33 U.S.C. §§ 1251 et seq.;
- b. "CBOD" means carbonaceous biochemical oxygen demand;
- c. "Calendar quarter" means a three month period ending on March 31st, June 30th, September 30th, or December 31st;
- d. "City" means the City of Plainview, Texas;
- e. "Complaint" means the Complaint filed by the United States in this action;
- f. "Consent Decree" means this Decree and all items approved by or submitted to EPA pursuant to Sections VIII & IX (Compliance Requirements & Reporting

Requirements). In the event of any conflict between this Decree and any approved item, this Decree shall control;

g. "Date of Lodging" means the date this Consent Decree is received by the Clerk of the United States Court for the Northern District of Texas prior to signature by the District Judge assigned to this civil action;

h. "Date of Entry" means the date this Consent Decree is received by the Clerk of the United States District Court for the Northern District of Texas after being signed by the District Judge assigned to this civil action;

i. "Day" shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day;

j. "Defendant" means the City of Plainview, Texas;

k. "DMR" means Discharge Monitoring Report;

l. "Effective Date of this Consent Decree" means the Date of Entry;

m. "EPA" means the United States Environmental Protection Agency and any successor departments or agencies of the United States;

n. "Facility" means Defendant's wastewater treatment facility located in Plainview, Texas;

o. "NPDES Permit No. TX0047571" means National Pollutant Discharge Elimination System ("NPDES") permit number TX0047571 issued pursuant to Section 402 of

the Act, 33 U.S.C. § 1342, for the Plainview POTW and any future, extended, modified, or reissued NPDES permit for the same facility;

- p. "Paragraph" means a portion of this Consent Decree identified by an Arabic numeral;
- q. "Parties" means the United States, the State of Texas, and Defendant;
- r. "Plainview POTW" means the publicly owned treatment works owned and operated by Defendant located adjacent to Running Water Draw, approximately two miles southeast of the intersection of U.S. Highway 70 and State Highway Loop 445, in Hale County, Texas;
- s. "Section" means a portion of this Consent Decree identified by an uppercase Roman numeral;
- t. "State" means the State of Texas;
- u. "Subparagraph" means a portion of a Paragraph;
- v. "TSS" means total suspended solids;
- w. "United States" means the United States of America, acting on behalf of EPA.

VII. CIVIL PENALTY

12. The City shall pay a civil penalty in the amount of Seventy-Five Thousand Dollars (\$75,000). Payment shall be due within thirty (30) days of after the Effective Date of the Consent Decree. Payment of the civil penalty shall be made as follows:

- a. The City shall pay the sum of \$75,000 as a civil penalty within thirty (30) days after the Effective Date of this Consent Decree. Payment shall be made pursuant to specific

instructions provided to the City by the Financial Litigation Unit of the U.S. Attorney's Office for the Northern District of Texas. At the time of payment, the City shall simultaneously send written notice of payment and a copy of any transmittal documentation (which should reference USAO file number 2001V01403 and DOJ case number 90-5-1-1-07661 and the civil action number of this case) to the United States in accordance with Section XIX of this Consent Decree (Notices).

13. This civil penalty shall be considered a money judgment in favor of the United States. The remedies provided in the Federal Debt Collection Procedures Act, 28 U.S.C. § 3001 et seq., shall be available to the United States for purposes of collection of this civil penalty.

14. If the City fails to tender all or any portion of the civil penalty payment within thirty (30) days of the Effective Date of this Consent Decree, then interest on the civil penalty shall accrue from the date payment was due on any unpaid portion of the penalty at the rate established pursuant to 28 U.S.C. § 1961 in effect on the Date of Entry and shall continue to accrue until full payment is made. Interest shall be compounded annually. The City also shall be liable for stipulated penalties pursuant to Section X (Stipulated Penalties) for any failure to comply with the requirements of Paragraph 12.

15. If the City fails to pay the civil penalty when due, the United States may institute proceedings to collect the penalties and interest. If such a proceeding is instituted, the City shall be liable to reimburse the United States for its expenses and attorney fees connected with the proceeding. Attorney fees shall be allowable at the maximum rate permitted under 28 U.S.C. § 2412(d)(2)(A)(ii) without a finding of special factors.

16. In the event of late payment of the civil penalty required to be paid under this Section, Defendant shall pay a stipulated penalty for each day that the payment is late, pursuant to Paragraph 35, Section X (Stipulated Penalties). Late payment of the civil penalty shall be made pursuant to specific instructions provided to the City by the Financial Litigation Unit of the U.S. Attorney's Office for the Northern District of Texas to the City. All transmittal correspondence (which should reference USAO file number 2001V01403 and DOJ case number 90-5-1-1-07661 and the civil action number of this case) shall be sent to the United States in accordance with Section XIX of this Consent Decree (Notices) and state that any such payment tendered is for late payment of the civil penalty or for stipulated penalties for late payment, as applicable.

VIII. COMPLIANCE REQUIREMENTS

17. With respect to the Facility, the City shall comply at all times with applicable requirements of the Act, the regulations promulgated thereunder, and all terms of NPDES Permit No. TX0047571.

Management, Operation and Maintenance Program

Program Development

18. The City shall prepare and implement a comprehensive system-wide Plainview POTW Management, Operation and Preventative Maintenance Program. The Management, Operation and Preventative Maintenance Program shall be designed to ensure proper operation and maintenance of the Plainview POTW on a day-to-day basis in compliance with the Act and NPDES Permit No. TX0047571. The City shall send notice that it has completed the preparation and implementation of the Management, Operation and Preventative Maintenance Program, and

a copy of the Program, to the United States in accordance with Section XIX of this Decree (Notices). At a minimum, the Management, Operation and Preventative Maintenance Program shall provide for:

a. a schedule for preventative maintenance activities, with daily, weekly, monthly, quarterly and annual checklists addressing all areas of the Plainview POTW, including the treatment plant infrastructure, the laboratory and grounds;

b. routine operations and maintenance procedures;

c. a component, equipment and materials inventory;

d. current staffing, organization and resource commitments;

e. a procedure for resolving plant operations and maintenance issues, including daily problem identification, scheduled maintenance, and component inventory management, as well as entry of such data into databases or written compilations comprising the information management system required under Paragraph 21, below;

f. establishment of training requirements - the City shall ensure that all personnel with decision-making authority regarding operation and maintenance of the Plainview POTW have wastewater operator training and certification consistent with Texas State law;

19. The City may update the Management, Operation and Preventative Maintenance Program as needed, and shall maintain complete copies of the current and all prior versions of the Management, Operation and Preventative Maintenance Program on site at the Plainview POTW.

20. The City shall implement fully the Management, Operation and Preventative Maintenance Program required under Paragraph 18 no later than three months after the Effective Date of the Consent Decree. Upon full implementation, the Management, Operation and

Preventative Maintenance Program shall be incorporated into, and become enforceable under, this Consent Decree.

21. The City shall implement and maintain an information management system program to establish, update, and coordinate data systems used to collect information regarding the operation, maintenance and performance of the Plainview POTW, including POTW component, equipment and materials inventory information, complaints, work orders, location and the status of work to be implemented and completed to keep the POTW operating within its design parameters. The City shall design the information management system to assist the City in analyzing and compiling data necessary to prepare the Quarterly and Annual Reports required under Paragraphs 24 and 25, below.

22. Permits. Where any compliance obligation required by this Section of the Decree requires a federal, state, or local permit or approval, Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendant may seek relief under the provisions of Section XI (Force Majeure) of this Consent Decree for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit required to fulfill such obligation.

IX. REPORTING REQUIREMENTS

23. Approval of Deliverables. The City shall submit any plan, report, or other item that is required to be submitted for approval pursuant to this Consent Decree to EPA. EPA may approve the submittal or disapprove the submittal and provide written comments. In the event that EPA disapproves the submittal, within thirty (30) days of receiving EPA's written comments, the City shall either: (i) alter the submittal to address EPA's written comments and

provide the submittal to EPA for final approval; or (ii) submit the matter for dispute resolution under Section XII of this Decree (Dispute Resolution). Upon receipt of EPA's final approval of the submittal, or upon completion of the submittal pursuant to dispute resolution, the City shall implement the submittal in accordance with the schedule in the approved submittal. The United States retains its right to seek stipulated penalties, as provided in Section X of this Consent Decree (Stipulated Penalties), for any material defects in the original or revised submission.

24. Quarterly Reports. Beginning with the first full Calendar Quarter following entry of this Consent Decree, and each Calendar Quarter thereafter until termination of the Decree, the City shall submit to EPA for review and approval a Quarterly Report and such report shall be filed within thirty (30) days following the end of the Calendar Quarter. The Quarterly Report shall: (a) provide a summary of DMR's from the Calendar Quarter; (b) state whether compliance with the Plainview POTW Management, Operation and Preventative Maintenance Program was maintained; (c) identify any instances of non-compliance with the Management, Operation and Preventative Maintenance Program during the Calendar Quarter (drawn from the City's information management system program, as described in Paragraph 21); (d) describe any corrective action taken to address non-compliance during the Calendar Quarter. The items to be addressed in the Quarterly Report may be modified by written agreement of the Parties or by EPA approval of an Annual Report submitted pursuant to Paragraph 25 that contains a request by the City to modify the items to be addressed in the Quarterly Report.

25. Annual Report. In addition to the Quarterly Reports, one year from after the Date of Entry of this Consent Decree, the City shall submit to EPA for review and approval an Annual Report. The Annual Report shall provide: (a) a certification of compliance with current permit

standards and the Act; (b) verification of compliance with the Plainview POTW Management, Operation and Preventative Maintenance Program; (c) a description of each modification of the Plainview POTW Management, Operation and Preventative Maintenance Program, if any, (d) requests for modification of items to be addressed in the Quarterly Report, if any; and (e) a discussion of whether any modifications to the operations and maintenance of the Plainview POTW are necessary. The items to be addressed in the Annual Report may be modified by written agreement of the Parties or by EPA approval of an Annual Report submitted pursuant to this Paragraph that contains a request by the City to modify the items to be addressed in the Annual Report.

26. If, after receipt of an Annual Report pursuant to Paragraph 25, EPA determines that there are one or more violations of this Consent Decree or the Act, and that there is a nexus between such violations and the Plainview POTW Management, Operation and Preventative Maintenance Program, EPA may require the City to revise the Management, Operation and Preventative Maintenance Program. Upon receipt of such a notice, the City shall revise the Management, Operation and Preventative Maintenance Program to include measures to prevent the identified violations within sixty (60) days. Until such time as the Management, Operation and Preventative Maintenance Program is revised, the previous Management, Operation and Preventative Maintenance Program shall remain in effect.

27. If the City violates any requirement of this Consent Decree or its NPDES Permit, the City shall notify the United States of such violation and its likely duration in writing within ten (10) working days of the day the City first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, and/or to be taken, to

prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, the City shall include a statement to that effect in the report. The City shall immediately investigate to determine the cause of the violation and then shall submit an amendment to the report, including a full explanation of the cause of the violation, within thirty (30) days of the day the City becomes aware of the cause of the violation. If the City seeks to invoke force majeure, it shall comply with the requirements of Section XI of this Decree (Force Majeure).

28. All reports shall be submitted to the EPA as provided in Section XIX of this Consent Decree (Notices).

29. Each report submitted by the City under this Section shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gather and present the information contained therein. I further certify, based on my inquiry of those individuals immediately responsible for obtaining the information, that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

30. The City shall retain all underlying documents from which it has compiled any report or other submission required by this Consent Decree until five years after termination of the Decree.

31. The reporting requirements of this Consent Decree do not relieve the City of any reporting obligations required by the Act or implementing regulations, or by any other federal, state, or local law, regulation, or requirement.

32. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

X. STIPULATED PENALTIES

33. The City shall be liable for stipulated penalties to the United States, in the amounts set forth below in this Paragraph, for its failure to complete enumerated elements of the Plainview POTW Management, Operation and Preventative Maintenance Program as set forth in the charts below, unless excused under Section XI (Force Majeure). The stipulated penalties payable to the United States per day for the City's failure to complete enumerated elements of the Plainview POTW Management, Operation and Preventative Maintenance Program shall be as follows:

Stipulated Penalties for Failure to Complete Daily Work Sheet and Concurrent Narrative Notebook Entry	
Period of Noncompliance	Penalty per Day of Violation
1 st to 7 th day	\$50
8 th to 14 th day	\$100
more than 14 days	\$500

Stipulated Penalties for Failure to Complete Scheduled Maintenance When Due, as Specified in Plainview POTW Management, Operation and Preventative Maintenance Program, Daily Scheduled Maintenance Excepted	
Period of Noncompliance	Penalty per Day of Violation
1 st to 14 th day	\$100
15 th to 30 th day	\$500
more than 30 days	\$1000

Stipulated Penalties for Failure to Maintain Component Inventory as Specified in Plainview POTW Management, Operation and Preventative Maintenance Program	
Period of Noncompliance	Penalty per Day of Violation
1 st to 14 th day	\$50
15 th to 30 th day	\$250
more than 30 days	\$500

34. The City shall be liable for stipulated penalties to the United States, in the amounts set forth below in this Paragraph, for each day past the applicable deadline the City fails to submit a Quarterly Report pursuant to Paragraph 24, an Annual Report pursuant to Paragraph 25, or to resubmit any disapproved item, unless excused under Section XI (Force Majeure). The stipulated penalties payable to the United States per day for the City's failure to meet the deadline for submission of these reports shall be as follows:

Stipulated Penalties for Failure to Submit Timely Reports	
Period of Noncompliance	Penalty per Day of Violation
1 st to 30 th day	\$100
31 st to 60 th day	\$250
more than 60 days	\$1000

35. The City shall be liable for stipulated penalties to the United States, in the amounts set forth below in this Paragraph, for each day past the applicable deadline the City fails to pay the Civil Penalty required pursuant to Paragraph 12, unless excused under Section XI (Force Majeure). The stipulated penalties payable to the United States per day for the City's failure to meet the deadline for payment of the Civil Penalty shall be as follows:

Stipulated Penalties for Failure to Pay Civil Penalty	
Period of Noncompliance	Penalty per Day of Violation
1 st to 30 th day	\$500
31 st to 60 th day	\$1000
more than 60 days	\$2500

36. The City shall be liable for stipulated penalties to the United States, in the amounts set forth below in this Paragraph, for non-compliant discharge or for violations of any monitoring or reporting requirement in NPDES Permit No. TX0047571, unless excused under Section XI (Force Majeure) or excused under an affirmative defense of "upset" or "Act of God" as defined in the City's NPDES Permit or Texas Water Code § 7.251. The stipulated penalties payable to the United States per violation for each non-compliant discharge or failure to monitor and report as required shall be as follows:

Stipulated Penalties for Non-Compliant Discharge or Violations of Monitoring or Reporting Requirements in NPDES Permit No. TX0047571	
Permit Violation	Penalty per Violation
Exceedance(s) of the daily maximum limit or other non-monthly average limit	\$750
Exceedance(s) of monthly average limits	\$2000
Failure to comply with a Monitoring and Reporting Requirement	\$500

37. All stipulated penalties shall begin to accrue on the first day the City fails to satisfy any obligation or requirement of this Consent Decree, except for violations of monitoring and reporting requirements, and shall continue to accrue through the day the City satisfies the obligation or requirement of this Consent Decree. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

38. The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Decree.

39. Stipulated penalties shall continue to accrue during any Dispute Resolution, with interest on accrued penalties payable and calculated at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, the City shall pay accrued penalties determined to be owing, together with interest, to the United States within thirty (30) days of agreement or the receipt of EPA's decision or order. The City shall not be liable for any stipulated penalties if it prevails in the dispute or if the parties to the dispute so agree;

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, the City shall pay all accrued penalties determined by the Court to be owing, together with interest, within thirty (30) days of receiving the Court's decision or order, except as provided in subparagraph c, below;

c. If any Party appeals the District Court's decision, the City shall pay all accrued penalties determined by the District Court to be owing, together with interest, into an interest-bearing escrow account within thirty (30) days of receipt of the Court's decision or order. Every thirty (30) days after making the initial payment into the escrow account, the City shall pay into the escrow account all stipulated penalties that have accrued during the interim since the last payment. Within fifteen (15) days of receiving the final appellate court decision, the escrow agent shall pay the balance of the account to the United States (in accordance with the payment instruction set forth in Paragraph 40) or to the City, whichever prevails.

40. If the United States demands stipulated penalties accruing for violations under this Consent Decree, such stipulated penalties shall be payable in accordance with the following Paragraphs.

41. Unless otherwise specifically provided in this Consent Decree, stipulated penalties shall be due and owing no later than thirty (30) days following the City's receipt from the United States of a demand for payment, except as specifically provided in Paragraph 38, above. Stipulated penalties owing to the United States shall, as directed by the United States, be paid pursuant to specific instructions provided to the City by the Financial Litigation Unit of the U.S. Attorney's Office for the Northern District of Texas to the City. Payments shall be accompanied by a transmittal letter that references Unites States v. Plainview (N.D. Tex.) and the civil action

number of this case, states the amount being paid, and specifically describes the violations that are the basis for the stipulated penalty being paid. At the time of payment, copies of the transmittal letter and proof of payment shall be sent to the United States, to persons designated in Section XIX of this Consent Decree (Notices).

42. Payment of stipulated penalties as set forth above shall be in addition to any other rights or remedies which may be available to the United States by reason of the City's failure to comply with the requirements of this Consent Decree and all applicable Federal, state or local laws, regulations, wastewater discharge permit(s) and all other applicable permits.

43. In the event that a stipulated penalty is not paid when due, the stipulated penalty shall be payable with interest from the original due date to the date of payment at a rate equal to the statutory judgment rate set forth at 28 U.S.C. § 1961(a) in effect on the date the penalty becomes due.

44. The payment of stipulated penalties shall not alter in any way the City's obligation to complete performance of the work required under this Consent Decree.

45. If the City fails to pay any stipulated penalties when due, the United States may institute proceedings to collect the stipulated penalties and interest. If such proceeding is instituted, the City shall be liable to reimburse the United States for its expenses and attorney fees connected with the proceeding. Attorney fees shall be allowable at the maximum rate permitted under 28 U.S.C. § 2412(d)(2)(A)(ii) without a finding of special factors.

46. For purposes of collection, any stipulated penalties which become due shall be considered a money judgment in favor of the United States. The remedies provided in the Federal Debt Collection Procedures Act (except the provisions of § 3201(e)),

28 U.S.C. § 3001 et seq., shall be available to the United States for purposes of collection of any stipulated penalties.

XI. FORCE MAJEURE

47. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the City, its contractors, or any entity controlled by the City that delays the performance of any obligation under this Consent Decree despite the City's best efforts to fulfill the obligation. Unanticipated or increased costs or expenses associated with implementation of this Consent Decree and changed financial circumstances shall not, in any event, be considered force majeure events. Failure to apply for a required permit or approval or to provide in a timely manner all information required to obtain a permit or approval that is necessary to meet the requirements of this Consent Decree, or failure of the City to approve contracts, shall not, in any event, be considered force majeure events. The requirement that the City exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and to address the effects of any such event (a) as it is occurring and (b) after it has occurred, such that the delay is minimized to the greatest extent practicable. "Force Majeure" does not include the City's financial inability to perform any obligation under this Consent Decree.

48. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, as to which the City intends to assert a claim of force majeure, the City shall provide notice in writing to the United States, as provided in Section XIX of this Consent Decree (Notices), within seven (7) days of the time the City first knew of, or by the exercise of due diligence should have known of, the event. Such notification shall include an

explanation and description of the reasons for the delay; the anticipated duration of the delay; a description of all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; and the City's rationale for attributing such delay to a force majeure event. Failure to comply with the above requirements shall preclude the City from asserting any claim of force majeure. The City shall be deemed to know of any circumstance of which the City, its contractors, or any entity controlled by the City knew or should have known.

49. If the United States agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by at least the amount of time lost due to the force majeure event. If the United States does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, then the City will be notified in writing of this decision and the reasons for the decision. If the United States agrees that the delay is attributable to a force majeure event, they will notify the City in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

50. If the City elects to invoke the dispute resolution procedure set forth in Section XII (Dispute Resolution) in connection with the United States' decision that a delay or anticipated delay is not attributable to a force majeure event, it shall do so no later than thirty (30) days after receipt of United States' notice pursuant to Paragraph 49. In any such proceeding, the City shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the City gave the notice required by Paragraph 48, that the duration of the delay or the extension sought was or will

be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that the City complied with the requirements of Paragraphs 47 and 48. If the City carries this burden, the delay at issue shall be deemed not to be a violation by the City of this Consent Decree.

51. An extension of one compliance date based on a particular force majeure event shall not automatically extend any other compliance date. The City shall make an individual showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought.

XII. DISPUTE RESOLUTION

52. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, such procedures shall not apply to actions by the United States to enforce obligations of the City that have not been disputed in accordance with this Section. Within thirty (30) days after a decision issued by EPA under Section IX (Reporting Requirements) is received by the City, that decision shall be final and not subject to dispute resolution unless the City has invoked dispute resolution pursuant to this Section prior to the expiration of the thirty (30) day period. Copies of all documents filed pursuant to Section XII of this Consent Decree (Dispute Resolution) shall be served upon the State of Texas in accordance with Section XIX of this Consent Decree (Notices).

53. Informal Dispute Resolution. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of good-faith informal negotiations between the parties to the dispute. The goal of the informal negotiations shall be to resolve the

dispute without further proceedings. The period for informal negotiations shall not exceed thirty (30) days from the time the dispute arises, unless (a) EPA, in its sole discretion, determines that a shorter period shall be allowed due to an immediate threat to the environment or (b) all parties to the dispute agree in writing to an extension. The dispute shall be considered to have arisen when the City sends EPA a written Notice of Dispute in accordance with Section XIX of this Consent Decree (Notices). The Notice of Dispute shall contain a concise statement of the issue or issues in dispute. If informal negotiations result in an agreement between the parties to the dispute, then those parties shall state the agreement in a single document in writing. If informal negotiations do not result in an agreement between the parties to the dispute, then the EPA shall provide to the City in writing its opinion on the disputed issue or issues.

54. Formal Dispute Resolution.

a. If the Parties cannot resolve a dispute by informal negotiations pursuant to the preceding Paragraph, then the position advanced by the United States shall be considered binding unless, within twenty (20) days after the issuance of a written opinion under Paragraph 53 by the United States is received by the City, the City invokes the formal dispute resolution procedures of this Section by serving on the United States, in accordance with Section XIX of this Consent Decree (Notices), a written Statement of Position on the matter in dispute. In its Statement of Position, the City shall describe the subject of the dispute, state its position on the dispute, and set forth in detail the basis for that position. The Statement of Position shall include the factual data, analysis, and opinions supporting the City's position and the supporting documentation relied upon by the City. The Statement of Position shall specify the City's position as to whether formal dispute resolution should proceed under Paragraph 55 or Paragraph

56.

b. Within twenty (20) days after receipt of the City's Statement of Position, the United States will serve on the City its Statement of Position. In its Statement of Position, the United States shall describe the subject of the dispute, state its position on the dispute, and set forth in detail the basis for that position. The Statement of Position shall include the factual data, analysis, and opinions supporting the United States' position and the supporting documentation relied upon by it. The Statement of Position shall specify the United States' position as to whether formal dispute resolution should proceed under Paragraph 55 or Paragraph 56.

c. Within seven (7) days after receipt of the Statement of Position by the United States, the City may submit a Reply to the United States' Statement of Position.

d. If there is disagreement as to whether dispute resolution should proceed under Paragraph 55 or Paragraph 56, the parties to the dispute shall follow the procedures set forth in the Paragraph as determined by the United States to be applicable. However, after a decision is issued under Paragraph 55(b) or Paragraph 56(a), if the City appeals the dispute to the Court for resolution under Paragraph 55(d) or Paragraph 56(a), the Court shall determine which Paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 55 and 56.

55. Resolution of Disputes. The formal dispute resolution procedures set forth in this Paragraph shall apply to disputes pertaining to matters that are accorded review on the administrative record under applicable principles of administrative law. The provisions of this Paragraph shall apply, without limitation, to disputes regarding items requiring approval by EPA under this Consent Decree.

a. An administrative record of the dispute shall be maintained by the United States and shall contain all Statements of Position submitted pursuant to Paragraph 53, including supporting documentation, submitted pursuant to this Section. Where appropriate, the United States may allow submittal of supplemental statements of position by the parties to the dispute.

b. In a case where the disputed decision was issued by EPA, the Director of the Compliance Assurance and Enforcement Division for EPA Region 6 will issue a final administrative decision resolving the dispute based on the administrative record described in Subparagraph (a) above. This decision shall be binding upon the City subject only to the right to seek judicial review pursuant to Subparagraphs (c) and (d).

c. Any administrative decision pursuant to Subparagraph (b) above shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the City with the Court and served on all Parties within twenty (20) days of receipt of the decision. The motion shall include a description of the matter in dispute, the efforts made to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. EPA may file a response to the City's motion.

d. In proceedings on any dispute governed by this Paragraph, the City shall have the burden of demonstrating that the decision under Subparagraph (b) above is arbitrary and capricious or otherwise not in accordance with law. Judicial review of decisions under Subparagraph (b) above shall be limited to the administrative record compiled pursuant to Subparagraph (a) above.

56. Formal dispute resolution for disputes that do not pertain to items requiring approval by EPA under this Consent Decree or that are not otherwise accorded review on the

administrative record under applicable principles of administrative law shall be governed by this Paragraph. The provisions of this Paragraph shall apply, without limitation, to disputes arising under Section XI (Force Majeure) regarding whether any failure by the City to meet a deadline was caused by a force majeure event and to disputes concerning whether the City is liable for stipulated penalties under this Consent Decree.

a. In a case where the disputed decision was issued by EPA, the Director of the Compliance Assurance and Enforcement Division, EPA Region 6 will issue a final decision resolving the dispute. Such decision shall be binding on the City unless, within twenty (20) days of receipt of the decision, the City files with the Court and serves on the other Parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. EPA may file a response to the City's motion.

b. Judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

57. In the event of any re-organization of EPA which affects the Compliance Assurance and Enforcement Division for EPA Region 6 and/or any substantial change in the responsibilities of the Director of the Compliance Assurance and Enforcement Division for EPA Region 6, EPA may notify the City, pursuant to Section XIX of this Consent Decree (Notices), that the authorities and responsibilities of the Director of the Compliance Assurance and Enforcement Division for EPA Region 6 will be transferred to an official specified in the notice.

58. The invocation of dispute resolution procedures under this Section shall not

extend, postpone, or affect in any way any obligation of the City under this Consent Decree not directly in dispute, unless the EPA agrees otherwise or the Court so orders or directs. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 39, above. In the event that the City does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section X (Stipulated Penalties).

XIII. RIGHT OF ENTRY

59. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry to any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by the City or its representative, contractors, or consultants;
- d. inspect and evaluate any portions of the Plainview POTW;
- e. inspect and review any records required to be kept under the terms and conditions of this Consent Decree, applicable NPDES Permit, or the Act; and
- f. assess Defendant's compliance with this Consent Decree.

60. These inspection rights are in addition to, and in no way limit or otherwise affect, the United States' statutory authorities to conduct inspections, to require monitoring, and to obtain information from the City as authorized by law.

XIV. RECORD KEEPING

61. Until five (5) years after the termination of this Consent Decree, the City shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all records and documents (including records or documents in electronic form) now in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to the City's performance of its obligations under this Consent Decree. This record retention requirement shall apply regardless of any City document retention policy to the contrary. The City shall submit such supporting documents to EPA upon request.

XV. FAILURE OF COMPLIANCE

62. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that the City's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act or with the City's NPDES permit.

Notwithstanding the EPA's review and approval of any documents submitted to it by the City pursuant to this Consent Decree, the City shall remain solely responsible for compliance with the terms of this Consent Decree, all applicable permits, the Act and regulations promulgated under the Act. The pendency or outcome of any proceeding concerning issuance, reissuance, or modification of any permit, grant or loan shall neither affect nor postpone the City's duties and obligations as set forth in this Consent Decree.

XVI. COVENANT NOT TO SUE BY THE UNITED STATES AND THE STATE OF TEXAS

63. In consideration of the actions that will be performed under the terms of this Consent Decree by the City and the payments that the City will make pursuant to Paragraph 12

(Civil Penalty) and except as otherwise specifically provided in this Consent Decree, the United States covenants not to sue or to take administrative action against the City for civil claims specifically alleged in the Complaint which accrue on or before the Date of Lodging. In consideration of the actions that will be performed under the terms of this Consent Decree by the City and except as otherwise specifically provided in this Consent Decree, the State of Texas covenants not to sue or to take administrative action against the City for civil claims specifically alleged in the Complaint which accrue on or before the Date of Lodging. This covenant not to sue is conditioned upon satisfactory performance by the City of its obligations under this Consent Decree. This covenant not to sue shall take effect upon the receipt by the United States the full payment required by Paragraph 12 (Civil Penalty). This covenant not to sue extends only to the City and does not extend to any other person.

64. The United States and the State of Texas reserve all remedies available to each entity for violations of the Act by the City which are not alleged in its Complaint and for violations of the Act by the City which occur after the Date of Lodging of this Consent Decree.

65. This Consent Decree does not resolve criminal liability, if any, that any person might have for violations of the Clean Water Act.

66. Nothing in this Consent Decree shall be construed to limit the authority of the United States or the State of Texas to undertake any action against any person, including the City, in response to conditions that may present an imminent and substantial endangerment to the environment or to the public health or welfare.

67. This Consent Decree does not limit or affect the rights of the City or of the United States or of the State of Texas against any third parties, not party to this Consent Decree, nor

does it limit the rights of third parties, not party to this Consent Decree, against the City.

68. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

69. The United States and the State of Texas reserve any and all legal and equitable remedies available to enforce the provisions of this Consent Decree.

70. Performance of the terms of this Consent Decree by the City is not conditioned on the receipt of any federal or state funds.

**XVII. NOT A PERMIT/COMPLIANCE WITH OTHER
STATUTES/REGULATIONS**

71. This Consent Decree is not and shall not be construed as a permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342, nor as a modification of any existing permit so issued, nor shall it in any way relieve the City of its obligations to obtain and maintain NPDES permits for the Plainview POTW or any other part of its wastewater treatment and collection system or facilities and to comply with the requirements of any NPDES permit and any other applicable federal or state law or regulation. Any new permit, or modification of existing permits, must be complied with in accordance with applicable federal and state laws and regulations.

72. Nothing herein shall be construed as relieving the City of the duty to comply with the Act, regulations promulgated under the Act, and all permits issued under the Act.

73. This Consent Decree shall not be construed as a ruling or determination of any issue related to any federal, state, or local permit required in order to implement this Consent Decree or required to continue operation of the Plainview POTW. The City shall be responsible for obtaining any federal, state, or local permit(s) required for any Work under this Consent Decree.

XVIII. COSTS

74. Each party shall bear its own costs and attorney's fees with respect to matters resolved by this Consent Decree. Should the City subsequently be determined by the Court to have violated the terms and conditions of this Consent Decree, the City shall be liable to the United States for any expenses and attorney's fees incurred by the United States in actions against the City to enforce the requirements of this Consent Decree. Attorneys fees shall be allowable at the maximum rate permitted under 28 U.S.C. § 2412(d)(2)(A)(ii) without a finding of special factors.

XIX. NOTICES

75. Unless otherwise specified herein, all reports, notices, submissions or any other written communications required to be submitted under this Consent Decree shall be made in writing and sent to the respective parties at the following addresses:

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Reference: DOJ Case No. 90-5-1-1-07661.

Street Address (No USPS delivery)
1425 New York Avenue, N.W.
Washington, DC 20005

Chief, Water Enforcement Branch (6EN-W)
Compliance Assurance and Enforcement Division
U.S. Environmental Protection Agency, Region VI
1445 Ross Avenue
Dallas, Texas 75202-2733

E. Scott Frost
Assistant United States Attorney
Northern District of Texas
1205 Texas Avenue, Suite 700
Lubbock, Texas 79401-4002

Reference USAO # 2001V01403

As to EPA:

Chief, Water Enforcement Branch (6EN-W)
Compliance Assurance and Enforcement Division
U.S. Environmental Protection Agency, Region VI
1445 Ross Avenue
Dallas, Texas 75202-2733

As to TCEQ:

Lisa Lemanczyk
Litigation Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Street Address
12100 Park 35 Circle
Austin, TX 78753

As to the City:

City Manager
City of Plainview
901 Broadway
Plainview, TX 79072

76. Notifications to or communications, if received, shall be deemed submitted on the day they are postmarked and sent by certified mail, return receipt requested or, when sent by non-postal delivery, the date of pickup provide same is for next day.

XX. RETENTION OF JURISDICTION

77. The Court shall retain jurisdiction of this case until termination of this Consent Decree, for the purpose of implementing and enforcing the terms and conditions of this Consent Decree. Specifically, the Court shall retain jurisdiction for the purpose of enabling any of the Parties to apply to the Court for such further order, direction, or relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XII of this

Decree (Dispute Resolution).

XXI. MODIFICATION

78. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by all the Parties.

79. Where the modification constitutes a material change to any term of this Consent Decree, it may be made only with written notification to and written approval of each of the Parties, pursuant to Section XIX of this Consent Decree (Notices), and the Court and with an opportunity for public notice and comment in a manner consistent with Paragraph 83 and 84.

80. Where the modifications to this Consent Decree do not materially alter this document, they may be made by written agreement between the United States, the State of Texas, and the City.

81. Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this Consent Decree.

XXII. CONTINGENT LIABILITY OF STATE OF TEXAS

82. This Consent Decree does not resolve the contingent liability of the State of Texas under Section 309(e) of the Act, 33 U.S.C. § 1319(e). The United States specifically reserves its claims against the State, and the State reserves its defenses.

XXIII. PUBLIC PARTICIPATION

83. After this Consent Decree has been signed by all Parties, it shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if comments by the public regarding the Consent Decree disclose facts or

considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. This Paragraph does not create any rights exercisable by the City.

84. The Parties agree and acknowledge that final approval by Plaintiff, the State of Texas, and entry of this Consent Decree is subject to the requirements of the Texas Water Code § 7.110. This Paragraph does not create any rights exercisable by the City.

85. By the signature of its authorized representative below, the City agrees to entry of this Consent Decree without further notice.

XXIV. TERMINATION

86. The Consent Decree shall remain in effect until terminated by the Court pursuant to a Motion for Termination filed by a Party. As a requirement of termination, the City shall have the burden to demonstrate the following items:

- a. The City has paid all civil penalties, costs, damages, stipulated penalties, and other sums due under this Consent Decree;
- b. With respect to the Facility, the City has maintained continuous compliance with the requirements of the Act and its NPDES permit for a period of eighteen (18) months after the Effective Date of this Consent Decree; and
- c. The City has maintained continuous compliance with the Management, Operation and Preventative Maintenance Program for a period of at least eighteen (18) months after the City has implemented fully and begun compliance with the Management, Operation and Preventative Maintenance Program, as specified in Paragraph 20, and submitted at least six (6) Quarterly Reports and one (1) Annual Report.

If the conditions set forth in Subparagraph (b) and/or Subparagraph (c) have not been met, the

City may still file a Motion for Termination; however, if EPA, in its sole discretion, objects to termination based upon the City's failure to meet the conditions set forth in Subparagraph (b) and/or Subparagraph (c), then the Court shall deny termination until all the conditions specified above have been met.

87. After the City has fulfilled its duties under Paragraph 87, the City may serve upon the United States, pursuant to Section XIX of this Consent Decree (Notices), the Motion for Termination, with supporting documentation demonstrating that the City has successfully completed all requirements of this Consent Decree and that all other requisite conditions for termination of the Consent Decree have been satisfied.

88. Following receipt by the United States of the City's Motion for Termination, the Parties shall schedule one or more conferences (which may be by telephone) to discuss the Motion for Termination and any disagreement that the Parties may have as to whether the City has complied with the requirements of the Consent Decree and whether all other requisite conditions for termination of the Consent Decree have been satisfied. Such period of consultation shall continue for no less than fifteen (15) days following receipt of The City's Motion.

89. If, following the consultation period provided for by the preceding Paragraph, the Parties cannot come to agreement as to whether the City has complied with the requirements of the Consent Decree, or whether all other requisite conditions for termination of the Consent Decree have been satisfied, the City may file its Motion for Termination with the Court.

90. The United States shall have the right to oppose the City's Motion for Termination.

91. If, following the consultation period provided for by Paragraph 89, above, the Parties agree that the City has complied with the requirements of the Consent Decree and that all other requisite conditions for termination of the Consent Decree have been satisfied, they shall file with the Court an agreed motion so notifying the Court and requesting termination of the Consent Decree.

XXV. SIGNATORIES/SERVICE

92. The Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice, on behalf of the United States, and the undersigned representatives of the City, and the State of Texas certify that each one is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

93. This Consent Decree may be signed in counterparts, and such counterpart signature pages shall be given full force and effect.

94. The City hereby agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Consent Decree, unless the United States notifies the City in writing that it no longer supports entry of the Consent Decree.

95. The City hereby agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXVI. INTEGRATION

96. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree and supersedes all prior agreements and understandings, whether oral or written. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Decree or the settlement it represents, nor shall it be used in construing the terms of this Consent Decree.

XXVII. FINAL JUDGMENT

97. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between the United States, the State of Texas, and the City.

Entered this __ day of _____, 200__,

UNITED STATES DISTRICT JUDGE

FOR PLAINTIFF UNITED STATES OF AMERICA:

9.28.04
Date

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

9/29/04
Date

SCOTT E. STEWART
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

RICHARD B. ROPER
United States Attorney
Northern District of Texas

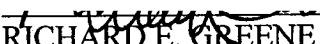
9/30/04
Date

E. SCOTT FROST
Assistant United States Attorney
Northern District of Texas
1205 Texas Avenue, Suite 700
Lubbock, Texas 79401


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FOR THE ENVIRONMENTAL PROTECTION AGENCY:

09-23-04
Date


RICHARD E. GREENE
Regional Administrator (6RA)
U.S. Environmental Protection Agency
Region VI
1445 Ross Avenue
Dallas, Texas 75202-2733

9/23/04
Date


JOHN C. EMERSON
Assistant Regional Counsel (6RC-EW)
U.S. Environmental Protection Agency
Region VI
1445 Ross Avenue
Dallas, Texas 75202-2733

FOR THE STATE OF TEXAS:

GREG ABBOTT
Attorney General of Texas

BARRY R. McBEE
First Assistant Attorney General

EDWARD D. BURBACH
Deputy Attorney General for Litigation

KAREN W. KORNEILL
Assistant Attorney General
Chief, Natural Resources Division

9/28/04

Date

BURGESS JACKSON
Assistant Attorney General
State Bar No. 10486850
Natural Resources Division
P. O. Box 12548
Austin, Texas 78711-2548

ATTORNEYS FOR PLAINTIFF
THE STATE OF TEXAS

FOR THE CITY OF PLAINVIEW.

Date

9-23-04

GREG INGHAM
City Manager
City of Plainview
901 Broadway
Plainview, Texas 79072
(806) 296-1106

Date

9/23/04

WALLY HATCH
City Attorney
City of Plainview
901 Broadway
Plainview, Texas 79072
(806) 296-1108

Date

9/24/04

JIM MATHEWS
Mathews & Freeland, LLP
P.O. Box 1568
Austin, Texas 78768-1568
(512) 404-7800

ATTORNEYS FOR THE CITY OF PLAINVIEW